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Calendar No. 775

101ST CONGRESS *2nd Session*	SENATE	REPORT 101-420

FEDERAL MARITIME COMMISSION AUTHORIZATION

Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

OF THE

SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ON

S. 2759

AUGUST 3 (legislative day, JULY 10), 1990.—Ordered to be printed

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101ST CONGRESS
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101-420

FEDERAL MARITIME COMMISSION AUTHORIZATION

AUGUST 3 (legislative day, JULY 10), 1990.—Ordered to be printed

Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

[To accompany S. 2759]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 2759) to authorize appropriations for fiscal year 1991 for the Federal Maritime Commission, and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill as amended do pass.

PURPOSE OF THE LEGISLATION

This bill authorizes appropriations for the continuation of programs administered by the Federal Maritime Commission (FMC) for fiscal year (FY) 1991; extends the date of filing the final report of the Advisory Commission on Conferences in Ocean Shipping; and strengthens the FMC's authority to correct unfair trade practices in our waterborne foreign commerce. The bill also authorizes issuance of certificates of documentation for the vessels *Cherokee V*, *Ernestina*, and *Salisa M.*

BACKGROUND AND NEEDS

FMC AUTHORIZATION AND RESPONSIBILITIES

The bill, as reported, authorizes the appropriation for FY 1991 of $15,894,000 for the FMC. The FMC is an independent regulatory agency that administers: the Shipping Act, 1916; the Merchant Marine Act, 1920; the Intercoastal Shipping Act, 1933; the Shipping Act of 1984; the Foreign Shipping Practices Act of 1988; and related shipping statutes. The FMC's major responsibilities include: the review of tariff filings and service contracts; investigation and adju-

dication of penalties for discriminatory rates or practices among shippers, carriers, and terminal operators operating in the U.S. ocean commerce; licensing of independent ocean freight forwarders; passenger vessel certification; and countering against the actions of foreign carriers or governments that create unfavorable conditions in U.S. foreign ocean trades. The FMC does not regulate international ocean transportation rates, but does apppove rates for waterborne transportation between domestic ports and domestic offshore ports such as Hawaii and Puerto Rico.

Since 1975, the FMC has been limited within its authorization to $1,500 for official reception and representation expenses. The bill, as reported, increases this allowable expenditure to $2,000.

THE ADVISORY COMMISSION ON CONFERENCES IN OCEAN SHIPPING

The Shipping Act of 1984 established the Advisory Commission on Conferences in Ocean Shipping, effective October 20, 1989. It further required that the final report of the Advisory Commission be submitted to the President and Congress within one year after its establishment. Since the full membership of the Advisory Commission has not been appointed, it is necessary to extend the date for the submission of the Advisory Commission's final report. The bill, as amended, extends the time period within which the Advisory Commission is to issue its report to the President and Congress on its findings.

FMC AUTHORITY WITH RESPECT TO UNFAIR TRADE PRACTICES

Section 19 of the Merchant Marine Act, 1920, empowers the FMC to make rules to meet general or special conditions unfavorable to shipping when those conditions result either from foreign laws, rules, or regulations or from the actions of a foreign shipping line or its agent. The FMC is also authorized to request the head of any department, board, or agency of the U.S. Government to suspend, modify, or annual rules that affect shipping in the foreign trade.

The FMC uses this authority to investigate unfair maritime trade practices. If the FMC finds a practice of a foreign government, foreign operator, or group of foreign operators harmful to U.S. shipping, it can suspend the tariffs of the carrier flying the flag of the nation engaged in the harmful action.

On various occasions these statutory provisions have been inadequate to eliminate unfair practices. The two principal problems hindering the FMC in section 19 proceedings are the absence of (1) specific authority to obtain information for a complete investigation, and (2) sanctions (other than tariff suspension) that can be imposed on offending operators.

More efficient and effective enforcement under section 19 can be accomplished by clarification that the section applies to bulk as well as liner operators; the granting of authority for shippers, third-flag carriers, and others to seek commencement of a section 19 investigation; and clarification that the FMC may examine intermodal movements, terminal operations, and other shipping-related activities. The bill, as reported, specifically includes intermodal movements and certain land-based activities within the scope of section 19 of the Merchant Marine Act, 1920; specifies those per-

sons or entities who may seek section 19 relief; empowers the FMC to use compulsory process in section 19 investigations; and authorizes a broader range of remedies to correct unfair foreign practices.

JONES ACT REQUIREMENTS

Section 27 of the Merchant Marine Act, 1920 (known as the "Jones Act"), provides that only vessels built in the United States, documented under the law of the United States, and owned by a citizen of the United States may transport merchandise in the coastwise trade of the United States. It also provides that a vessel that has acquired the right to engage in the coastwise trade and is later sold foreign or is placed under foreign registry may not engage in the coastwise trade.

Chapter 121 of title 46, U.S.C., prohibits foreign-built, foreign-owned, or foreign-documented vessels from engaging in the U.S. coastwise trade. Chapter 121 establishes requirements for the issuance of a certificate of documentation to engage in the fisheries of the United States, one of which is that the vessel be built in the United States.

When the facts surrounding any particular vessel involve one or more of these statutory prohibitions, the Coast Guard may not issue a document granting coastwise trading or fisheries privileges. A vessel may acquire these privileges, however, through specific legislation authorizing the Secretary of Transportation to issue the necessary documentation for that vessel. In the past, the Committee has approved such legislation when the owners of particular vessels have demonstrated that there were extenuating and compelling circumstances meriting such action.

The bill, as amended, authorizes the Coast Guard to issue appropriate coastwise trading and U.S. fisheries documents for the vessels *Cherokee V, Ernestina,* and *Salisa M.*

Cherokee V

The *Cherokee V,* U.S. official number 570746, is an 82-foot passenger yacht built at Berwick-upon-Tweed in Scotland. The current owners were unaware when they purchased the vessel that it could not be used for commercial entertainment because of the restrictions of the Jones Act and title 46. The owner intends to use the vessel for such purposes. A waiver of the Jones Act and title 46 provisions is necessary because the vessel was not built in the United States.

Ernestina

The *Ernestina,* U.S. official number 136423, is a 93-foot schooner built in Massachusetts in 1894. The vessel has been documented in Portugal and the Cape Verde Islands. The vessel is owned by the Commonwealth of Massachusetts, which intends to use it as an oceangoing sailing school. The owner is seeking a waiver of the Jones Act and title 46 provision because the vessel has not been under continuous ownership of a citizen of the United States.

Salisa M

The *Salisa M,* U.S. official number 265653, is a 112-foot passenger yacht built in Canada in 1942. The vessel was bought in 1982 at a Federal court auction and has been under continuous ownership of a U.S. citizen since that time. The owner did not know that the vessel was foreign-built when he purchased it. A waiver of the Jones Act and title 46 provisions is necessary because the vessel was not built in the United States.

Legislative History

The Merchant Marine Subcommittee held a hearing on June 20, 1990, to consider H.R. 4009, the FMC authorization bill approved by the House of Representatives on April 3, 1990, and referred to the Committee. S. 2759 was introduced by Senator Breaux on June 27, 1990 and is cosponsored by Senator Lott. On June 27, 1990, in open executive session the Committee considered and, without objection, ordered reported favorably an amendment in the nature of a substitute to S. 2759.

Summary of Major Provisions

The legislation authorizes $15,894,000 for the FMC in FY 1991. It also increases the allowable expenditure for official reception and representation expenses for the FMC to $2000.

In addition, the legislation extends the time period within which the Advisory Commission on Conferences in Ocean Shipping is to issue its report to the President and Congress on its findings to one year from the date that all of the members of the Advisory Commission have been appointed.

With respect to unfair trade practices, the legislation amends section 19 of the Merchant Marine Act, 1920 (46 App. U.S.C. 876), to strengthen the FMC's authority to address and correct unfair conditions and practices unfavorable to shipping in our foreign commerce. The bill clarifies who may petition the FMC for relief against unfair trade practices and codifies existing FMC regulations providing that any person, including a common carrier, tramp operator, bulk operator, shipper, shippers' association, ocean freight forwarder, marine terminal operator, or any component of the government of the United States, may file a petition for relief.

The bill also strengthens the FMC's authority in a rulemaking investigation to obtain needed information by compulsory process, including written reports, subpoena, or other judicial procedures. The bill provides additional remedies for the FMC to use if it finds evidence of unfavorable shipping conditions. The legislation also clarifies that the FMC's current rulemaking and investigating powers include intermodal movements, terminal operations, cargo solicitation, forwarding and agency services, non-vessel operating common carrier operations, and all other activities integral to total transportation systems.

Finally, the legislation grants a legislative waiver to permit the Coast Guard to issue appropriate coastwise trading and U.S. fisheries documents for the vessels *Cherokee V, Ernestina,* and *Salisa M.*

Waivers for these vessels were passed by the House as part of H.R. 4009.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 17, 1990.

Hon. ERNEST F. HOLLINGS,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for S. 2759, a bill to authorize appropriations for fiscal year 1991 for the Federal Maritime Commission, and for other purposes.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

ROBERT D. REISCHAUER, *Director.*

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: S. 2759.

2. Bill title: A bill to authorize appropriations for fiscal year 1991 for the Federal Maritime Commission, and for other purposes.

3. Bill status: As ordered reported by the Senate Committee on Commerce, Science and Transportation, June 27, 1990.

4. Bill purpose: S. 2759 would authorize the appropriation of $15.894 million to the Federal Maritime Commission (FMC) for fiscal year 1991. The authorization level is identical to the President's request and is $442,000 more than fiscal year 1990 appropriations.

Section 2 of the bill would extend the current deadline for a report to be issued by the Advisory Commission on Conferences in Ocean Shipping. (Under current law, the commission's report is due at the end of fiscal year 1990.)

Section 3 would amend Section 19 of the Merchant Marine Act of 1920 (relating to foreign shipping practices). This section would codify existing FMC procedures and conform the agency's powers and remedies available under that act with those authorized under similar statutes.

Section 4 would authorize the U.S. Coast Guard to provide three vessels with certificates of documentation for domestic employment.

5. Estimates cost to the Federal Government:

[By fiscal year, in millions of dollars]

	1991	1992	1993	1994	1995
Authorization level	15.9				
Estimated outlays	14.3	1.6			

The costs of this bill fall within budget function 400.

Basis of estimate: For purposes of this estimate, it is assumed that the full amounts authorized will be appropriated for fiscal year 1991. The authorization level is that stated in Section 1 for the FMC. Other sections of S. 2759 would have no impact on the federal budget.

6. Estimated cost to State and local governments: None.

7. Estimate comparison: None.

8. Previous CBO estimate: On April 2, 1990, CBO prepared a cost estimate for H.R. 4009, as ordered reported by the House Committee on Merchant Marine and Fisheries on March 28, 1990. The estimated costs of the two bills are identical.

9. Estimate prepared by: Deborah S. Reis.

10. Estimate approved by: James L. Blum, Assistant Director, for Budget Analysis.

Regulatory Impact Statement

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported.

NUMBER OF PERSONS COVERED

The bill, as reported, authorizes appropriations for the continuation of programs within the FMC. The increase of $442,000 above last year's appropriation includes $347,000 for salary and benefit costs of support FMC programs. The number of persons covered by provisions of this bill will not vary significantly from those currently subject to regulation by the FMC.

ECONOMIC IMPACT

Section 1 of this bill authorizes $15,894,000 for the FMC in FY 1991. There is not expected to be any inflationary impact on the Nation's economy from the enactment of this authorization.

PRIVACY

This legislation will not have an adverse impact on the personal privacy of the individuals affected unless properly subject to subpoena or discovery relating to the enforcement of unfair trade practices as set forth in the bill.

PAPERWORK

This legislation reauthorizes existing programs within the FMC. There should, therefore, be no change in the paperwork requirements associated with these programs.

SECTION-BY-SECTION ANALYSIS

SECTION 1.—AUTHORIZATION LEVELS

This section authorizes a total appropriation of $15,894,000 for the FMC for FY 1991. This amount is identical to the Administration's budget request and the amount authorized in H.R. 4009, approved by the House of Representatives. This amount represents an increase of $442,000 over the appropriated amount for FY 1990. The authorization provides that no more than $2,000 for official reception and representation expenses will be allowed.

SECTION 2—ADVISORY COMMISSION REPORT

This section amends section 18 of the Shipping Act of 1984 (46 App. U.S.C. 1717). The Advisory Commission on Conferences in Ocean Shipping was established under section 18(d) of that Act. The Advisory Commission is required under section 18(h) of that Act to report to the President and Congress within one year after its establishment. This section amends section 18(h) of the Shipping Act of 1984 to require that the report be submitted no later than one year after all of the Advisory Commission members have been duly appointed. This change is necessary because, while the Advisory Commission was established as of October 20, 1989, not all of the members of the Advisory Commission have been appointed, and the report to the President and Congress under current law would be due by October 20, 1990.

SECTION 3—SECTION 19 OF THE MERCHANT MARINE ACT, 1920

This section amends section 19 of the Merchant Marine Act, 1920 (46 App. U.S.C. 876), to strengthen the FMC's authority to address and correct unfair foreign trade practices and conditions unfavorable to shipping in the foreign commerce of the United States. The section clarifies that the FMC's current rulemaking and investigative powers include intermodal movements, terminal operations, cargo solicitation, forwarding and agency services, non-vessel-operating common carrier operations, and other activities and services integral to transportation systems. The section also adds eight new paragraphs to section 19 concerning the FMC's investigatory procedures.

New paragraph (5) clarifies that any person or government agency, including a common carrier, tramp operator, bulk operator, importer, exporter, shipper, or consignee, may petition the FMC to commence a section 19 rulemaking to protect the rights of such person or agency. This provision codifies the practice followed by the FMC as provided in its section 19 regulations.

New paragraphs (6) through (12) direct the inclusion under section 19 of the compulsory process provisions now contained in the Foreign Shipping Practices Act of 1988 (46 U.S.C. App. 1710a). New paragraph (6) clarifies that the FMC has the authority to require any person to file written reports or answers to questions, or provide documentary material or other material which the FMC considers necessary or appropriate. The paragraph also clarifies that the documents and responses may be required to be submitted

under oath and that a $5,000 fine may be imposed for failure to provide information under the paragraph.

New paragraph (7) authorizes the FMC to obtain necessary information by subpoena or other judicial procedures and provides a $5,000 penalty for failure to comply with an FMC subpoena.

New paragraph (8) authorizes the FMC to withhold from public disclosure an information provided in a section 19 proceeding.

New paragraph (9) provides the FMC with additional remedies for sanctioning persons involved in unfavorable shipping practices. These remedies include limitations on the number of sailings to U.S. ports, limitations on the type of cargo handled, suspension of the right to operate under tariffs filed with the FMC, and imposition of a fee of up to $1 million per voyage.

New paragraph (10) directs the U.S. Customs Service, following an FMC request, to refuse entry into a U.S. port or departure of a vessel from a U.S. port en route to another U.S. port.

New paragraph (11) provides for a fine of $50,000 for a common carrier operating under a tariff that has been suspended under section 19(7)(d) or 19(9)(b).

New paragraph (12) authorizes the FMC to consult with other appropriate government agencies prior to taking any action under section 19.

SECTION 4—JONES ACT VESSEL WAIVERS

Section 4 provides that, notwithstanding certain sections of chapter 121 of title 46, U.S.C., and section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883), as applicable on the date the bill is enacted, certain vessels may be issued documents with appropriate endorsement to lawfully engage in the coastwise trade, Great Lakes trade, or fisheries of the United States. The vessels are *Cherokee V, Ernestina,* and *Salisa M.*

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman).

MERCHANT MARINE ACT, 1920

SECTION 19 OF THAT ACT

SEC. 19. (1) The Secretary of Transportation is authorized and directed in aid of the accomplishment of the purposes of this Act—

(a) * * *

(b) To make rules and regulations affecting shipping in the foreign trade not in conflict with law in order to adjust or meet general or special conditions unfavorable to shipping in the foreign trade, whether in any particular trade or upon any particular route or in commerce generally, *including intermodal movements, terminal operations, cargo solicitation, forwarding and agency services, non-vessel-operating common carrier operations, and other activities and services integral to trans-*

portation systems, and which rise out of or result from foreign laws, rules, or regulations or from competitive methods or practices employed by owners, operators, agents, or masters of vessels of a foreign country; and

(c) * * *

(2) through (4) * * *

(5) The Commission may initiate a rule or regulation under paragraph (1)(b) of this section either on its own motion or pursuant to a petition. Any person, including a common carrier, tramp operator, bulk operator, shipper, shippers' association, ocean freight forwarder, marine terminal operator, or any component of the Government of the United States, may file a petition for relief under paragraph (1)(b) of this section.

(6) In furtherance of the purposes of paragraph (1)(b) of this section—

(a) the Commission may, by order, require any person (including any common carrier, tramp operator, bulk operator, shipper, shippers' association, ocean freight forwarder, or marine terminal operator, or an officer, receiver, trustee, lessee, agent, or employee thereof) to file with the Commission a report, answers to questions, documentary material, or other information which the Commission considers necessary or appropriate;

(b) the Commission may require a report or answers to questions to be made under oath;

(c) the Commission may prescribe the form and the time for response to a report and answers to questions; and

(d) a person who fails to file a report, answer, documentary material, or other information required under this paragraph shall be liable to the United States Government for a civil penalty of not more than $5,000 for each day that the information is not provided.

(7) In proceedings under paragraph (1)(b) of this section—

(a) the Commission may authorize a party to use depositions, written interrogatories, and discovery procedures that, to the extent practicable, are in conformity with the rules applicable in civil proceedings in the district courts of the United States;

(b) the Commission may by subpoena compel the attendance of witnesses and the production of books, papers, documents, and other evidence;

(c) subject to funds being provided by appropriations Acts, witnesses are, unless otherwise prohibited by law, entitled to the same fees and mileage as in the courts of the United States;

(d) for failure to supply information ordered to be produced or compelled by subpoena in proceedings under paragraph (1)(b)(7) of this section, the Commission may—

(i) after notice and an opportunity for hearing, suspend tariffs of a common carrier or that common carrier's right to use the tariffs of conferences of which it is a member, or

(ii) assess a civil penalty of not more than $5,000 for each day that the information is not provided; and

(e) when a person violates an order of the Commission or fails to comply with a subpoena, the Commission may seek enforcement by a United States district court having jurisdiction over the parties, and if, after hearing, the court determines that the

order was regularly made and duly issued, it shall enforce the order by an appropriate injunction or other process, mandatory or otherwise.

(8) Notwithstanding any other law, the Commission may refuse to disclose to the public a response or other information provided under the terms of this section.

(9) If the Commission finds that conditions that are unfavorable to shipping under paragraph (1)(b) of this section exist, the Commission may—

(a) limit sailings to and from United States ports or the amount or type of cargo carried;

(b) suspend, in whole or in part, tariffs filed with the Commission for carriage to or from United States ports, including a common carrier's right to use tariffs of conferences in United States trades of which it is a member of any period the Commission specifies;

(c) suspend, in whole or in part, an ocean common carrier's right to operate under an agreement filed with the Commission, including any agreement authorizing preferential treatment at terminals, preferential terminal leases, space chartering, or pooling of cargoes or revenue with other ocean common carriers;

(d) impose a fee, not to exceed $1,000,000 per voyage; or

(e) take any other action the Commission finds necessary and appropriate to adjust or meet any condition unfavorable to shipping in the foreign trade of the United States.

(10) Upon request by the Commission—

(a) the collector of customs at the port or place of destination in the United States shall refuse the clearance required by section 4197 of the Revised Statutes (46 App. U.S.C. 91) to a vessel of a country that is named in a rule or regulation issued by the Commission under paragraph (1)(b) of this section, and shall collect any fees imposed by the Commission under paragraph (9)(d) of this section; and

(b) the Secretary of the department in which the Coast Guard is operating shall deny entry for purpose of oceanborne trade, of a vessel of a country that is named in a rule or regulation issued by the Commission under paragraph (1)(b) of this section, to any port or place in the United States or the navigable waters of the United States, or shall detain that vessel at the port or place in the United States from which it is about to depart for another port or place in the United States.

(11) A common carrier that accepts or handles cargo for carriage under a tariff that has been suspended under paragraph (7)(d) or (9)(b) of this section, or after its right to use another tariff has been suspended under those paragraphs, is subject to a civil penalty of not more than $50,000 for each day that it is found to be operating under a suspended tariff.

(12) The Commission may consult with, seek the cooperation of, or make recommendations to other appropriate Government agencies prior to taking any action under this section.

SHIPPING ACT OF 1984

SECTION 18 OF THAT ACT

SEC. 18. AGENCY REPORTS AND ADVISORY COMMISSION.

(a) through (g) * * *

(h) FINAL REPORT.—The *Advisory* Commission shall, within 1 year after [its establishment] *all of its members have been duly appointed,* submit to the President and to the Congress a final report containing a statement of the findings and conclusions of the Advisory Commission resulting from the study undertaken under subsection (f), including recommendations for such administrative, judicial, and legislative action as it deems advisable. Each recommendation made by the Advisory Commission to the President and to the Congress must have the majority vote of the Advisory Commission present and voting.

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